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November 5, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Written *Ex Parte* Presentations: In The Matter of Preserving the Open Internet,
Docket GN09-191; In The Matter of A National Broadband Plan For Our Future,
Docket 09-51); CTIA Petition for Declaratory Ruling, Docket 08-165**

Dear Madam Secretary:

On November 4, 2009, the below identified members of the National Association of Telecommunications Officers and Advisors (NATOA) Board of Directors and the undersigned conducted an *ex parte* meeting with Jennifer Schneider, Chief Legal Advisor to Commissioner Copps with respect to the above captioned matters. The subject matter of our conversation was consistent with the representations outlined in the attached documents which we shared with Ms. Schneider.

The NATOA Board members present were Ken Fellman, President, Mary Beth Henry, Immediate Past President, Jodie Miller, Board Member, and Tony Perez, Board Member.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter and the presentation used during the meeting are being filed via ECFS with your office. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

Miller & Van Eaton, P.L.L.C.

By


Gerard Lavery Lederer

cc: Jennifer Schneider
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TOP TEN POINTS OF THE NATOA FILING ON THE CONTRIBUTION OF LOCAL GOVERNMENT TO BROADBAND¹

(FCC National Broadband Plan Public Notice #7)

1. Broadband networks are essential elements to local government civic engagement and e-government.
2. Local government municipal fiber networks are critical to broadband deployment.
3. Municipal fiber networks provide services for local governments that the private sector is unable or unwilling to provide.
4. Continued local authority will encourage broadband deployment through franchising build-out, the spurring of private investment, and rights-of-way management.
5. The National Broadband Plan must include strong measures to protect public broadband initiatives from the many barriers they face such as state legislation, frivolous lawsuits, and anticompetitive incumbent behavior.
6. The National Broadband Plan should adopt policies to preserve existing local broadband networks and to enable the expansion of those networks.
7. The National Broadband Plan should adopt policies to enable the deployment of new local broadband networks.
8. Rights-of-way management must continue to occur at the local level to ensure that existing public and private infrastructure remains safe and also to allow for the provision of new competitive services.
9. Local governments must be permitted to obtain fair and reasonable compensation for the use of public rights-of-way.
10. The National Broadband Plan must preserve state and local land use and zoning authority over wireless siting.

¹ Comments of NATOA will be filed with the FCC on November 6, 2009.



LOCAL GOVERNMENT PERSPECTIVE ON ZONING OF WIRELESS FACILITIES

- **Congress has spoken clearly on this issue and retained local zoning.**

The language of § 332(c)(7) is clear as to Congress' intent to keep local and State zoning of wireless facility siting applications intact. Even more to the point, the legislative history says that § 332(c)(7) "prevents Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances set forth." The limitations referred to require that wireless siting applications must be addressed "within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request," and that zoning regulations "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

- **Congress left disputes arising under § 332(c)(7) to the courts.**

Congress was clear in the legislative history that "[i]t is the intent of the conferees that other than under section 332(c)(7)(B)(iv) [radio emissions] of the Communications Act of 1934...the courts shall have exclusive jurisdiction over all other disputes arising under this section."

- **The wireless industry has presented scant and specious claims to support its petition.**

The claims used to support the petition are few and faulty. The wireless industry has presented supposed "horror stories," telling only one side of the story and in some cases giving vague or anonymous tales to support their claims. At the same time, the wireless industry repeatedly says most local zoning authorities are able to complete applications within the deadlines they propose. In essence, they claim no problem exists except in extreme cases – the precise reason Congress left flexibility in the process by retaining local zoning control and providing for a judicial forum to handle disputes or delays that may arise during wireless siting applications. The last time the wireless industry made claims like those in the petition, the FCC and local governments worked with industry to find a solution – recent history the industry now chooses to forget.

- **Granting the industry's petition would undermine due process and democratic values.**

Many local zoning authorities are required to provide local residents with notice of a proposed siting, as well as an opportunity to comment and voice concerns with a proposal. This process – designed to further protect property values, safety, and aesthetic qualities of an area – would be eviscerated under the petition. Further, for local zoning authorities to process applications in line with the proposed deadlines, they would be forced to give preference to wireless siting applications, something Congress specifically rejected in the legislative history: "It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision."

NATOA filed comments in response to CTIA's Petition with the FCC on behalf of itself, the National League of Cities, National Association of Counties, and the United States Conference of Mayors. Additional information can be found at www.natoa.org.

Presented 10/24/08 US House of Representatives Energy & Commerce Staff

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Who is NATOA?

The National Association of Telecommunications Officers and Advisors (NATOA) is the national association that represents the communications needs and interests of local governments, and those who advise local governments. Our membership includes local government agencies, local government staff and public officials, as well as consultants, attorneys, and engineers who consult with local governments on their communications needs. Our government members have responsibilities that range from cable administration, telecommunications franchising, rights-of-way management and government access programming to information technologies and I-NET planning and management. We have members from not-for-profit organizations whose needs and interests are complementary to those of NATOA's members, as well as local government vendors and communications providers of all types of services to and for local governments.